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Attorneys for Defendant Boston Proper, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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NICOLE MILLER, LTD. d/b/a KOBRA :
INTERNATIONAL, LTD., a New York :
Corporation, :

Plaintiff, :

- against - :

BOSTON PROPER, INC., a Florida :
Corporation; and JOHN DOES 1-15; XYZ :
CORPORATIONS 1-15, :

Defendants. :

ECF CASE
07 Civ 9894 (RJH)

ANSWER TO COMPLAINT

JURY TRIAL DEMANDED

-----X

Defendant Boston Proper, Inc. ("Boston Proper") hereby answers and responds to the complaint filed by Plaintiff Nicole Miller, Ltd. d/b/a Kobra International, Ltd., as follows:

THE PARTIES

1. Boston Proper is without information sufficient to determine the truth of the averments in paragraph 1, and therefore denies same.

2. Admits.

3. Boston Proper is without information sufficient to determine the truth of the averments in paragraph 3, and therefore denies same.

JURISDICTION AND VENUE

4. Admits that the complaint avers an action for: (a) copyright infringement; (b) unfair competition and false designation of origin; (c) unlawful and deceptive acts and practices in violation of N.Y. Gen. Bus. Law §349; and (d) unfair competition under New York state law, based on activities that allegedly have occurred in this District and elsewhere in interstate commerce, but denies that those claims have merit.

5. Denies the allegations contained in paragraph 5 of the complaint, except admits that subject matter jurisdiction is proper in this District and that supplemental jurisdiction is proper in this District.

6. Admits.

7. Admits.

FACTUAL BACKGROUND

A. NICOLE MILLER PRODUCTS AND ITS ALLEGED COPYRIGHTED DESIGN

8. Admits that Nicole Miller is a designer that has been featured in magazines and other media. Boston Proper is without information sufficient to determine the truth of the remaining averments in paragraph 8, and therefore denies same.

9. Admits that a purported copy of a Certificate of Registration and deposit are attached to the complaint as Exhibit A. Boston Proper is without information sufficient to determine the truth of the remaining averments in paragraph 9, and therefore denies same.

10. The averments of paragraph 10 recite a legal conclusion to which no response is required.

11. Admits that a purported copy of the Nicole Miller store locator for New York is attached as Exhibit B to the complaint, and that copies of advertisements are attached to the complaint as Exhibit C. Boston Proper is without information sufficient to determine the truth of the remaining averments in paragraph 11, and therefore denies same.

B. BOSTON PROPER ALLEGED ACTS

12. Denies the allegations contained in paragraph 12 of the complaint, except admits that alleged copies of photographs of products are attached to the complaint as Exhibit D.

13. Denies the allegations contained in paragraph 13 of the complaint, except admits that a copy of a letter dated March 22, 2007 from Greenberg Traurig LLP to Boston Proper is attached to the complaint as Exhibit E, and that Boston Proper received the letter.

14. Denies.

15. Denies.

16. Denies.

FIRST CLAIM FOR RELIEF

(Copyright Infringement Under 17 U.S.C. §501)

17. Defendant Boston Proper repeats and realleges the responses contained in paragraphs 1 through 16 of this Answer as if fully set forth herein.

18. Boston Proper is without information sufficient to determine the truth of the averments in paragraph 18, and therefore denies same.

19. Denies the allegations contained in paragraph 19 of the complaint, except admits that Boston Proper is not licensed by Plaintiff with respect to the alleged Nicole Miller Copyright or Africa Design.

20. Denies.

21. Denies.

22. Denies.

SECOND CLAIM OF RELIEF

(Unfair Competition and False Designation of Origin Under 15 U.S.C. § 1125(a))

23. Defendant Boston Proper repeats and realleges the responses contained in paragraphs 1 through 22 of this Answer as if fully set forth herein.

24. Denies.

25. Denies.

26. Denies.

27. Denies.

28. Denies.

THIRD CLAIM OF RELIEF

(Unlawful Acts and Practices Under New York General Business Law § 349)

29. Defendant Boston Proper repeats and realleges the responses contained in paragraphs 1 through 28 of this Answer as if fully set forth herein.

30. Denies.

31. Denies.

32. Denies.

33. Denies.

34. Denies.

FOURTH CLAIM OF RELIEF

(Unfair Competition Under New York State Law)

35. Defendant Boston Proper repeats and realleges the responses contained in paragraphs 1 through 34 of this Answer as if fully set forth herein.

36. Boston Proper is without information sufficient to determine the truth of the averments in paragraph 36, and therefore denies same.

37. Denies.

38. Denies.

39. Denies.

[There are no numbered paragraphs between paragraphs 39 and 58 of the complaint.]

58. Denies.

59. Denies.

PRAYER FOR RELIEF

WHEREFORE, Boston Proper prays:

1. That the complaint against Boston Proper be dismissed;
2. that an award of costs and attorneys' fees be granted to Boston Proper;
3. for such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Boston Proper hereby demands a jury trial on all triable issues raised by the complaint.

Dated: December 17, 2007

Respectfully submitted,

/s/ Lansing R. Palmer

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